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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO	
09/896,970	06/29/2001	Christina Sidoti	B42-001	9857	
7:	590 09/07/2004		EXAMINER		
Coleman Sudol Sapone, P.C.			WONG, LESLIE A		
714 Colorado A Brideport, CT			ART UNIT PAPER NUMBER		
• ,			1761		
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DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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		Application No.	Applicant(s)	$-\psi$			
Office Action Summary		09/896,970	SIDOTI ET AL.				
		Examiner	Art Unit				
		Leslie Wong	1761				
Period f	The MAILING DATE of this communication ap or Reply	pears on the cover sheet with t	he correspondence addres	s			
THE - Exte after - If the - If NO - Failt Any	MORTENED STATUTORY PERIOD FOR REPL MAILING DATE OF THIS COMMUNICATION. ensions of time may be available under the provisions of 37 CFR 1. or SIX (6) MONTHS from the mailing date of this communication. e period for reply specified above is less than thirty (30) days, a repulate of the provided period for reply is specified above, the maximum statutory period ure to reply within the set or extended period for reply will, by statute reply received by the Office later than three months after the mailing patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a reply ly within the statutory minimum of thirty (30 will apply and will expire SIX (6) MONTHS e, cause the application to become ABAND	be timely filed O) days will be considered timely. If from the mailing date of this commur ONED (35 U.S.C. § 133).	nication.			
Status							
1)[\]	Responsive to communication(s) filed on 11 A	August 2004					
2a)∏	<u></u>	s action is non-final.					
3)□	,						
	closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposit	ion of Claims						
4)⊠	Claim(s) 45-66 is/are pending in the application	on.					
	4a) Of the above claim(s) is/are withdrawn from consideration.						
5)⊠	Claim(s) 45-64 is/are allowed.						
6)⊠	Claim(s) <u>65 and 66</u> is/are rejected.						
7)	Claim(s) is/are objected to.						
8)□	Claim(s) are subject to restriction and/o	or election requirement.					
Applicat	ion Papers						
9)	The specification is objected to by the Examine	er.					
10)	The drawing(s) filed on is/are: a) acc	cepted or b) objected to by t	he Examiner.				
	Applicant may not request that any objection to the	drawing(s) be held in abeyance.	See 37 CFR 1.85(a).				
	Replacement drawing sheet(s) including the correct	tion is required if the drawing(s) is	s objected to. See 37 CFR 1.	121(d).			
11)	The oath or declaration is objected to by the Ex	xaminer. Note the attached Of	fice Action or form PTO-15	52.			
Priority (under 35 U.S.C. § 119						
	Acknowledgment is made of a claim for foreign ☐ All b)☐ Some * c)☐ None of: 1.☐ Certified copies of the priority document	•	9(a)-(d) or (f).				
	2. Certified copies of the priority document		cation No				
	3. Copies of the certified copies of the prio			e			
	application from the International Burea						
* 5	See the attached detailed Office action for a list	` ' ''	eived.				
	\$ 4						
Attachmen	t(s)						
_	ce of References Cited (PTO-892)	4) 🔲 Interview Sumn	nary (PTO-413)				
2) 🔲 Notic	e of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Ma	ail Date				
	mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) or No(s)/Mail Date	5) Notice of Inform 6) Other:	nal Patent Application (PTO-152)				

U.S. Patent and Trademark Office PTOL-326 (Rev. 1-04) Application/Control Number: 09/896,970

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 11, 2004 has been entered.

Claims 45-64 are allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US Patent No. 4,840,808).

Lee et al disclose a preservative composition comprising magnesium, zinc, copper, and calcium for use in the production of pasta (see entire patent, especially the Examples).

The claims differ as to the specific amounts claimed.

In the absence of a showing to the contrary, the amounts claimed are merely seen to be a matter of choice and well-within the skill of the art, where too much or too

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little would not have the desired known effect. At most the amounts are seen to be no more than optimization, see In re Boesch 205 USPQ 215.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the claimed amounts in that of Lee et al because the amounts chosen are no more than within the skill of the art.

Lee et al teaches the use of the claimed composition in the preparation of pasta where it is not seen how this differs from that of the claimed invention. The selection of the time of addition is merely a matter of choice and well-within the skill of the art.

Applicant claims a composition. It is noted that the recitation that the product is made by a new process, if the process were indeed new and patentable, does not render an otherwise unpatentable product new and patentable. The product must stand on its own invention, independently of the process of producing same. See In re Marosi, 218 USPQ 195; In re Thorpe, 227 USPQ 964; Ex parte Jungfer, 18 USPQ 2nd 1976.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Globie Wong Leslie Wong

Primary Examiner

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LAW September 3, 2004